FILED
SEP 8 1950
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM 1950

No. 43

PEOPLE OF THE STATE OF ILLINOIS ON RELATION OF WILLIAM EDWARD WOODS,
Petitioner,

v.

JOHN M. TUOHY, Presiding Justice, GROVER C. NIEMEYER and MICHAEL FEINBERG, Justices, constituting the First Division of the Appellate Court of Illinois for the First District, *Respondents.*

PETITIONER'S REPLY BRIEF.

WILLIAM EDWARD WOODS
Petitioner

By HARRY G. FUERST
SCHWARTZBERG & BARNETT
Attorneys for Petitioner
77 West Washington Street
Chicago 2, Illinois

HARRY G. FUERST
HARRY P. WARNER
HERBERT S. OGDEN
Of Counsel

816 Connecticut Avenue
Washington 6, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

Petitioner's Reply Brief

Page

The Merits.

I. Respondent's Contention That It was Deprived of the Defense of Contributory Negligence is Wholly Untenable Even Though There Had Not Been Any Violation by the Respondent of Its Duty to Comply With the Federal Boiler Inspection and Federal Safety Appliance Acts 12

Jurisdiction.

I. This Court Has Jurisdiction to Review the Orders of the Illinois Supreme Court in the Mandamus Action 14

II. This Court Has Jurisdiction to Review the Judgments of the Appellate Court of Illinois and the Orders of the Supreme Court of Illinois Dismissing Petitioner's Writ of Error and His Petition for Leave to Appeal Which are Final Judgments and Decrees Within the Purview of Title 28, United States Code, Section 1257(3). In Any Event They are Further Subject to Review Under the Provision of Title 28, United States Code, Section 1651(a) 19

A. Federal Law 19

B. Illinois Law 24

TABLE OF CASES

Armstrong v. Obucino, 300 Ill. 140 17
Bailey v. Central Vermont Ry., 319 U. S. 350..... 26
Brady v. Southern Ry. Co., 320 U. S. 476..... 26
Cuneo v. City of Chicago, 272 Ill. 473..... 26
Cusson v. Canadian Pacific Ry. Co., 2d Cir. 1940, 115 F. (2d) 430 11
Department of Banking v. Pink, 317 U. S. 264.....22, 26

Page

Dickinson v. Petroleum Conversion Corporation, 70 S. Ct. 322 ..... 19, 20
Dinaffria v. Brotherhood of Teamsters, 399 Ill. 304.. 26
Fairport P. & E. R. Co. v. Meredith, 292 U. S. 589.... 19
Gospel Army v. City of Los Angeles, 331 U. S. 543.... 21
Haseltine v. Central Bank of Springfield, 183 U. S. 130 ..... 20, 21
Hill v. Atlantic Coast Line R. R. Co., 336 U. S. 911.... 26
Louisiana Navigation Co. v. Oyster Commission, 226 U. S. 99 21
Marino v. Ragen, 332 U. S. 561..... 16
Mitchell v. Geister, 337 Ill. 390, 86 N. E. 2d 293 1949).. 14
People ex rel. German Insurance Co. v. Williams, 145 Ill. 573 14
People ex rel. Kerner v. Keeney, 399 Ill. 611..... 15
People ex rel. Mike Magloie v. Joseph Siman, 284 Ill. 28 17
People ex rel. Modern Woodmen of America v. The Circuit Court of Washington County, 347 Ill. 34.. 17
People ex rel. Prince v. Graber, 397 Ill. 522..... 15
People ex rel. John A. Swanson v. James J. Kelly, Judge, 352 Ill. 567 18
People ex rel. Woll v. Graber, 394 Ill. 362..... 15
Reeves v. Beardall, 316 U. S. 283..... 23
Republic Natural Gas Co. v. State of Oklahoma, 334 U. S. 62, 67 26
Richfield Oil Corporation v. State Board, 329 U. S. 69.. 22
Roddy v. Armitage Hamlin Corporation, Inc., 401 Ill. 605 (1949) 24, 25
Schneiderman v. Interstate Transit Lines, Inc., 401 Ill. 172 23
Sperry v. Wabash R. Co. (D. C. E. D. Ill. 1943), 52 F. Supp. 337 ..... 22, 25
The Town of Kaneville v. Meredith, 361 Ill. 556..... 23
Tiller v. Atlantic Coast Line R. R. Co., 323 U. S. 574.. 26
Wilkerson v. McCarthy, 336 U. S. 53..... 26

CONSTITUTIONAL CITATIONS

Illinois Constitution, Article II, Paragraph 19..... 18
Illinois Constitution, Article VI, Paragraph 2..... 14
Illinois Constitution, Article VI, Paragraph 11..... 25

STATUTES CITED

Page

Federal Employers' Liability Act, 45 U. S. C. §50-60, Acts of April 22, 1908, c. 149, 35 Stat. 65; August 11, 1939, c. 685, 53 Stat. 1404 ..... 4, 12, 22
Federal Boiler Inspection Act, 45 U. S. C. §23; Acts of February 17, 1911, c. 103, 36 Stat. 913; March 4, 1915, c. 169, 38 Stat. 1192; June 7, 1924, c. 355, 43 Stat. 659 ..... 4, 5, 6, 7, 11, 12, 13, 18, 22, 23, 24, 27
Federal Safety Appliance Acts, 45 U. S. C. §11; Act of April 14, 1910, c. 160, 36 Stat. 298 ..... 4, 7, 9, 11, 12, 18, 22, 24, 27
Title 28, United States Code, §1257(3) 3, 4, 19
Title 28, United States Code, §1651 ..... 4, 19
Federal Rules of Civil Procedure, 54-B 23
Illinois Practice Act, §77 24

RULES OF INTERSTATE COMMERCE COMMISSION

Rule 129, C. F. R. Title 49, Parts 1-91, Sec. 91.129 22
Rule 131, C. F. R. Title 49, Parts 1-91, Sec. 91.139 22

IN THE

Supreme Court of the United States

OCTOBER TERM 1950

No. 43

PEOPLE OF THE STATE OF ILLINOIS ON RELATION OF WILLIAM EDWARD WOODS,
Petitioner,

v.

JOHN M. TUOHY, Presiding Justice, GROVER C. NIEMEYER and MICHAEL FEINBERG, Justices, constituting the First Division of the Appellate Court of Illinois for the First District, *Respondents.*

PETITIONER'S REPLY BRIEF.

Your petitioner believes that the interest of justice requires him to reply to respondents' brief in opposition to his petition for writ of certiorari in this cause, and that the interest of clarity and justice warrants the filing of a reply brief.

References (R.) are to the transcript of record on the leave to appeal proceeding, bound in the customary brown binding, except where otherwise indicated by (E. R.) in which instances the references are to the transcript of record, bound in gray, on the writ of error proceeding.

In this way, the misstatements of law and fact and the evasions and omissions contained in respondent's brief, can and will be fully demonstrated, to the end that the iniquitous disregard by the Appellate and Supreme Courts of Illinois of petitioner's statutory and constitutional rights be brought to light, and that the legalistic smoke-screen with which respondent seeks to enshroud and camouflage the gross injustice inflicted upon petitioner, be dispelled.

The petitioner's reply presents with clarity and fullness, the answers to all of the issues impelling this Court to reinvest this petitioner with all his legal and equitable rights that both the congressional laws and the Constitution of the State of Illinois and the United States have bestowed upon him. All of these rights the record patently discloses have been despoiled and destroyed by the Illinois Courts, as a result of which the petitioner has lost wages in the amount of $14,000.00 to date.

The respondent railroad company contends, in fine print, (Resp. Brief in No. 125, pp. 11-12) that even though petitioner will be precluded from recovering under the Federal Boiler Inspection Act on a second trial of this action under the opinion of the Illinois Appellate Court he could, after a foredoomed appeal to the Appellate Court, petition the Supreme Court of Illinois for leave to appeal. If the Supreme Court of Illinois should finally hold that the petitioner was entitled on the evidence already adduced to the instructions which were given with respect to the Boiler Inspection and Safety Appliance Acts, the petitioner could then have a third trial to vindicate his rights subject to further appeals and further delay. What chance would this petitioner have on a second or third appeal to the Supreme Court of Illinois in view of its conduct in refusing to correct the gross injustice which the Appellate Court has inflicted upon petitioner?

It is safe to predict that petitioner's loss of earnings by the time this protracted course of litigation is finally concluded will have doubled or tripled that already sustained,

provided the petitioner can stand the expense of such protracted litigation and lives to see it through. There is no truer axiom in this situation than, "Justice delayed is justice denied."

Respondent in No. 43 does not dispute, but tacitly admits, that the refusal of the Illinois Supreme Court to permit petitioner to file his proffered petition for writ of mandamus has *every attribute of finality* of the highest court of the State to enable this court *to review the ruling of the Illinois Supreme Court* under the provisions of Sec. 1257 (3) of Title 28 of the United States Code. The respondent affirmatively admits (Resp. Brief in No. 43, p. 3) that the mandamus action presented federal questions; however, they contend that this erroneous decision of the Illinois Supreme Court which they studiously and understandably refrain from undertaking to defend on the merits, is sustainable under Illinois law. We assert that under Illinois law this contention is base and fallacious. The reasons are two-fold:

1. The substantive rights and liabilities of the parties are created and defined exclusively by federal law, statutory and constitutional, and must be determined uniformly in all courts throughout the nation, including the courts of the State of Illinois, in accordance with federal decisional law.

2. The local law of Illinois and the rules of Illinois courts relating to and regulating practice and procedure governing appeals and other forms of review do not present the type of non-federal question behind which the glaring errors of the Illinois Appellate and Supreme Courts in the decision of the substantive federal questions in this cause can find immunity from correction by this Court.

Respondent's contention in No. 125 is that the orders of the Illinois Appellate and Supreme Courts are not "final judgments or decrees" within the meaning of 28 U. S. C.

Sec. 1257 and it attempts to brush off the power and jurisdiction conferred on this Court by Section 1651 of Title 28, United States Code, by a dogmatic and unsupported footnote to the effect that that section is not a source of jurisdiction to review state court judgments.

The Court must repudiate respondent's contention; otherwise the desired uniformity which this Court has emphatically said must be applied in all courts, state and federal, for the protection of the injured interstate carrier employees, would fail.

The claim by the respondent that the record does not support petitioner's contentions that the decisions of the Appellate and Supreme Courts of Illinois denies to him the constitutional guaranty of his right to a trial by jury, and of equal protection of the laws and do not nullify his federally created rights provided by the Federal Employers' Liability Act, the Federal Boiler Inspection Act and the Federal Safety Appliance Act, is as baseless as it is false.

Does respondent's counsel believe that this Court will not examine the record, including the proceedings on and the evidence adduced at the trial; likewise the Appellate Court's opinion and the subsequent proceedings, before passing on these applications for certiorari?

Does not the record (R. 55-57; ER. 7-9) contain an admission of guilt, both under the Federal Employers' Liability Act and the Federal Safety Appliance Act, made by counsel and spokesman for the railroad company at the opening of the trial, a year after he had taken petitioner's deposition by which the railroad company and its counsel was fully informed of petitioner's claims as to the inefficiency of the hand-brake on the coal car which permitted it to drift from a safe to an unsafe place after the brake was applied? (R. 56, 84, ER. 8, 36)

Is it not true that petitioner testified that the rear headlight on the tender of the backing locomotive was defective, and looked as if it had been smashed and as if the reflector was off, and that it was out of focus and cast its light up

in the air at an angle of about 45 degrees, leaving the area of 50 to 75 feet immediately behind the backing tender in complete darkness and disabling him from seeing the fouling coal car until it was too late for him to get to a place of safety and to avoid the grievous injuries he sustained when he was caught, crushed, and rolled in the narrow space between the side of the backing tender and the side of the fouling coal car?

Did not the Appellate Court, to which this same counsel again admitted liability in his printed brief and oral argument in open court, state in its opinion that petitioner's testimony as to the defect of the rear headlight created a jury question if the defect of the rear headlight could be made the basis of a violation of the Boiler Inspection Act?

Does counsel expect this Court to subscribe to the proposition that the permanent fixed-focus rear headlight was not a part and an appurtenance of the locomotive and within the scope and command of the Federal Boiler Inspection Act irrespective of the particular use to which the locomotive was being put at the precise moment of injury, and irrespective of the limited requirements of the rules of the Interstate Commerce Commission even under the far too narrow construction which the Appellate Court has ascribed to them?

Does counsel seriously expect this Court to say that a bad back-up or rear headlight permanently affixed to the tender by a fixed-focus method of application to light the way through the darkness of an unlit railroad yard, is better than no light at all and constitutes no violation of the Federal Boiler Inspection Act because it "created" no additional peril, despite the fact that the peril which resulted in petitioner's injury would not have existed if the back-up light had been in proper condition, lighting the area of greatest danger in the immediate vicinity of the backing tender and enabling petitioner to see the fouling coal car in time to avoid injury, notwithstanding the admitted negligence of the railroad company in permitting the coal car to

be in its dangerous position fouling a main track of a busy railroad yard?

Do respondents contend that the opinion and ruling of the Illinois Appellate Court on the subject of petitioner's right to recover full damage, if the railroad company used a locomotive with a back-up light which was defective and out-of-order and failed to perform the function it was designed and intended to perform, as the jury was concededly warranted to find in this case, do not constitute a final, conclusive and binding bar, upon any new trial under that opinion, to petitioner's right to full damages because of the violation by the railroad company of the provisions of the Federal Boiler Inspection Act irrespective of negligence which any jury might conceivably attribute to petitioner?

Do respondents contend that on any new trial different or additional evidence can alter the basis or avoid the effect of the Appellate Court decision on this subject?

Can respondents suggest any new, different or additional evidence which would raise the bar to petitioner's right to recover under the Appellate Court's opinion for violation by the railroad company of the provisions of the Federal Boiler Inspection Act in using a locomotive in backward motion with a defective back-up or rear headlight?

Do respondents contend that the railroad company at any time during the trial claimed or asserted that it was entitled to any diminution of the damages to which petitioner undisputably is entitled because of its conceded negligence, regardless of the condition of the rear headlight, and regardless of the condition of the hand brake on the coal car, by reason of any contributory negligence on the part of petitioner?

The answers to these questions, which are self-evident and which respondent's briefs in this court make crystal clear, cry out to high heaven against the brazen, flaunting disregard by the Appellate and Supreme Courts of Illinois of the laws of the Congress and the Constitution of the United States, the laws and Constitution of the State of Illinois, and the clear, emphatic decisions of this Court.

On the question of petitioner's right to recover full damages for the violation by the railroad company of the provisions of the Federal Boiler Inspection Act, the respondent, while refraining from making a forthright admission that petitioner will be precluded on any new trial under the Appellate Court's opinion from recovering full damages for violation of the Federal Boiler Inspection Act, does not have the hardihood to contradict that proposition. Counsel indulges in the subterfuge that petitioner on a new trial may recover full damages by reason of the railroad company's violation of the Federal Safety Appliance Act because (Respondent's Brief in No. 125, p. 13) "Conceivably, he may introduce additional evidence that the brake was actually set 'with due care in the normal, natural and usual manner' "; and "That, contrary to what respondent's witnesses testified, the slope of the spur track was toward the main" and, therefore, the decisions of the Appellate Court is not final. This subterfuge is as illusory as it is insincere. It does not in any wise negative the proposition that petitioner has, by the Appellate Court's ruling, been denied the right to recover under the Federal Boiler Inspection Act.

As we have pointed out, there was no contest, and it was in effect admitted at the trial, that the brake on the coal car was inefficient, permitting it to drift from its safe position to its dangerous position (R. 56, ER. 8) and the evidence, admitted expressly without objection, which was withdrawn after it had been sustained by the trial court (R. 71, 73, ER. 23, 25), establishes the fact of the inefficiency of the brake on the coal car and its causal connection with petitioner's severe injuries.

Respondent's counsel in No. 125, apparently viewing the trial of a lawsuit as a game of ambush and ambuscade and with shocking insincerity and attempted deception, denies his admission that the brake on the coal car was defective.

Let us examine the record (R. 56, ER. 8):

> "Now I notice what Mr. Fuerst said about how the car got there. I don't know if it was put there, or whether it had drifted there.

"In other words, if the brakes were defective in holding the car. But I do know the car was too close to this track to clear a man riding on it. In other words, a man could get between there, but he would have to hunch in close * * *."

The record is devoid of any justification for the assertion in respondent's brief in No. 125, p. 6, that counsel made his opening statement to the jury before he had had an opportunity to interview his witnesses. It passes credulity that an experienced trial counsel of an eminent law firm representing a great railroad company did not interview his witnesses or learn the facts until he put them on the witness stand. Even if he were so negligent in preparing the defendant's case for trial, he nevertheless was the official spokesman for the defendant railroad company; and the court, the jury and opposing counsel were entitled to rely upon his statement in opening the case as to what were the issues that were to be tried. He never at any time, until after the jury had rendered its verdict, attempted to withdraw or sought to amend or correct that statement. On the contrary, he expressly withdrew objection after it had been sustained by the trial court (R. 73, ER. 25) to the question:

"Q. What would you say from the point that a brake was applied where you saw it applied when this car was in the clear to where the car was when you started to work with your engine and your body came in contact with that car whether that brake was efficient?

"Mr. Moir: I object to that if your Honor please.

"The Court: Objection sustained.

"Mr. Fuerst: May I respectfully——

"Mr. Moir: Just a minute, if your Honor please, I withdraw the objection. Proceed.

"The Court: All right.

"Mr. Moir: Have the question read.

(Question read)

"A. No, I would say it wasn't."

With respect to the statement in respondent's brief in No. 125, page 5, that "respondent vigorously contested any liability under the Safety Appliance Act at the trial," the lack of record references speaks eloquently of the falsity of this statement. On the contrary, the respondent railroad company did not offer any evidence whatsoever that the hand brake on the coal car was efficient. It did not call the brakeman who set the brake on the coal car when it was put in on the spur track as a witness. It did not call anybody who must have operated the brake after the accident to testify to its condition, and it is inconceivable that the coal car was left in its dangerous position after causing injury to one of respondent railroad company's employees. It did not call any car or brake inspector to testify to the condition of the hand brake. It did not produce any profile map showing the grade of the spur track, as it most certainly would have done if there were any honest question as to the direction of the grade of that track.

With respect to the present claim of respondent in No. 125 that the "only evidence as to the slope of the spur track was the testimony of three members of petitioner's crew that the spur track sloped 'away from the main track' and, therefore, 'the drift of the coal car toward the main track was impossible,' " the respondent railroad company in its reply in the Appellate Court of Illinois stated, on p. 7:

> "Reading the cold printed testimony of defendant's three witnesses, we concede that the words used by two of them (McKinney and Thomas) may be ambiguous as to whether the Clifford siding 'sloped' *up* or 'sloped' *down* from the O. P. Main. The testimony of Farr that the siding 'slopes *away from* the O. P. main' (Abst. 135) plainly connotes a downward slant away. McKinney said the track 'slopes to the West' (Abst. 124). This could mean either an uphill or downhill slant. Webster's New International Dictionary (2d ed.) gives as one of the definitions of the verb 'slope', 'to have a slant,' and as one of the definitions of the noun 'slope', 'up-

ward or downward slant or inclination.' Thomas said the Clifford siding has 'an incline to the West' (Abst. 138). In the same dictionary we find one of the meanings of 'incline', is 'ascent or descent'.

"If the only things we had to go by were those few words without the aid of Farr's testimony, we confess it might be embarrassing to tell which way the slant was."

The testimony of the fireman that the siding "sloped away from the O. P. main" literally and logically refers to horizontal distance and not to vertical direction. "An incline to the West" in ordinary lay language connotes a rise as the track proceeds in a westerly direction. "Slopes to the West" is meaningless as to whether it slopes up or down.

It is perfectly apparent from reading the record as a whole that there was no contest whatever with respect to the inefficiency of the brake of the hand car or the direction of the slope of the spur track. Respondent's claim in this respect is a pure afterthought conjured up on its combing the record after the trial and after the jury had rendered its verdict in an effort to secure a new trial.

There was no claim at the trial that the brake on the coal car was not inefficient or that the coal car did not drift from its safe to its dangerous position. With or without the admission of counsel in opening the case to the court and jury and the testimony to which we have referred, the photographs, Defendant's Exhibits 2 and 3, quite plainly reveal that the spur track, which is the one at the right of the photographs, rises as it comes into the foreground of the picture and away from the O. P. main. (R. 175-177).

The three defense witnesses, McKinney, Thomas and Farr, offered by the carrier respondent, as disclosed by the record, were so highly prejudiced and biased in favor of the respondent that their testimony can be likened unto potter's clay in the hands of respondent's counsel. Their own contradictions on the witness stand and likewise the

photographic exhibits clearly made their testimony in its entirety, unbelievable. If respondent's contentions had the basis of truth, can this Court conceive that with all the engineers in the employ of this carrier, not a single one was produced to testify with measurements or mathematical certainty regarding the pseudo condition of a grade claimed by the carrier for the first time, after the action was tried.

In the case of *Cusson* v. *Canadian Pacific Railway Company,* 115 Fed. 2d 430, the court held in a like situation that where a car was braked and then drifted from the position where it was braked, resulting in an accident and injury to the employee this was sufficient to raise a question of fact as to whether or not the brake on the car was efficient. There can be no question that the record in the case at bar discloses that the brake on the coal car that fouled the O. P. main track was inefficient and violated the Safety Appliance Act, with or without an admission that the brake was inefficient at the commencement of the trial.

The Illinois Appellate Court, therefore, deprived this petitioner both of his constitutional rights and the protection intended and provided for him under the Federal Safety Appliance Act.

ARGUMENT

THE MERITS

I.

Respondent's Contention That It Was Deprived of the Defense of Contributory Negligence is Wholly Untenable Even Though There Had Not Been Any Violation by the Respondent of Its Duty to Comply With the Federal Boiler Inspection and Federal Safety Appliance Acts.

The Illinois Courts flagrantly and erroneously violated both the Constitution and Laws of the United States by their refusal to conform to the federal decisional law on both the Federal Boiler Inspection and Federal Safety Appliance Acts; and by their arbitrary denial of petitioner's

indisputable rights thereunder, have opened a contention that under the Federal Employers' Liability Act the respondent may have been deprived of the defense of contributory negligence.

The carrier respondent under both the Federal Boiler Inspection Act and the Safety Appliance Act is deprived of the defense of contributory negligence when either or both of these acts are violated.

Let us therefore consider this false and baseless claim of contributory negligence defense, as is now claimed by the respondent.

The record discloses these facts:

Before midnight on November 14, 1946, petitioner, in the performance of his duties, was crushed and rolled for a distance of five to ten feet or more, in the narrow space of three to six to not more than ten inches wide between the side of a tender backing on a main track in respondent's dark and unlit yard. The side of a fouling car on a spur track was admittedly too close to the main track to provide safe and sufficient clearance.

Now, the respondent in face of this admitted testimony of entrapment seeks a brass ring on his legalistic carousel, idem est, another opportunity to have another jury pass upon the question of the amount of its admitted liability to this petitioner on the pretended premises that another jury might award a lesser sum on the alleged unfounded claim of contributory negligence. This imaginary claim can only be created on the theory that petitioner failed to see the dangerous position of the coal car during the night in an unlit yard before his accident. Likewise, it may be claimed that his failure to undertake to jump off the moving tender from the dangerous position created by the fouling of the main right of way by the coal car was negligence.

The respondent railroad company's negligence in permitting the fouling of its track by the coal car is admitted. The gross and almost criminal negligence of the engineer in failing to stop the movement which, according to his own

testimony, he could have done in one-third of the distance the engine traveled after he saw the dangerous position of the coal car was proven by his own testimony. (R. 194-8).

If, as the Appellate Court states, the jury was entitled to find that the rear headlight was out of focus, the negligence of the respondent railroad company in not repairing it is a definite issue of negligence, apart from any question of violation of the Boiler Inspection Act.

The general foreman of the respondent railroad company in charge of maintenance of locomotives testified that where there is a defect in the headlight, a new one could be put in, in approximately ten minutes; likewise, a defect in the reflector, it would take forty-five minutes to change it; and if there is a defect in the wiring of the socket of the bulb, it takes about thirty minutes to replace the socket. (R. 214-5).

Is it conceivable that under these circumstances of gross and multiple negligence that a jury can be found that would attribute negligence to this petitioner under these circumstances? The respondent's multiple negligence presents a case where the principle of de minimus should be applied. In fact, we believe that under the federal decisional law by this Court a motion to direct a jury against finding contributory negligence against petitioner would be properly sustained.

We therefore submit that any claim for reduction of damages on account of any negligence which might be attributable to petitioner is unreal and wholly lacking in substance and should not be the vehicle for further delay in requiring respondent railroad company to compensate your petitioner for serious injuries inflicted upon him by the respondent's admitted negligence, from which there is no escape except the flagrant, erroneous violation by the Illinois Courts of both the Constitution and the laws of the United States and by their refusal to conform to the federal decisional law announced by this Court.

JURISDICTION

I.

This Court Has Jurisdiction to Review the Orders of the Illinois Supreme Court in the Mandamus Action.

Unlimited jurisdiction in mandamus is conferred upon the Supreme Court of Illinois by the Constitution of that State which provides in Article VI, Par. 2, as follows:

> "The Supreme Court * * * shall have original jurisdiction in cases relating to the revenue, in *mandamus* and *habeas corpus*, and appellate jurisdiction in all other cases * * *"

The power, jurisdiction and authority of the Supreme Court of Illinois to issue a writ of mandamus is as broad and untrammelled as was the power, jurisdiction and authority of the King's Bench in England prior to the fourth year of the reign of James I. In discussing that question, the Illinois Supreme Court in *People ex rel German Ins. Co.* v. *Williams*, 145 Ill. 573 said:

> "The common law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British parliament made in aid of, and to supply the defects of, the common law, prior to the fourth year of James I., (excepting certain statutes), and which are of a general nature, and not local to that kingdom, are by our statutes made the rule of decision until repealed by the legislature. Thereby the great body of the English common law became, as far as applicable, in force in this state."

One of the grounds upon which the Illinois Supreme Court entertains an original action for mandamus is that there is no other adequate remedy available to correct the wrong inflicted upon a litigant by an inferior court, and this jurisdiction is not confined to final orders, judgments and

decrees but may be exercised with respect to any interlocutory order which exceeds jurisdiction of the court. In the case at bar the Supreme Court of Illinois refused to follow its own pronouncement of the law germane to the writ of mandamus prayed for by your petitioner.

In *People ex rel Woll* v. *Graber*, 394 Ill. 362, the Illinois Supreme Court granted a writ of mandamus to expunge an interlocutory order of the Superior Court of Cook County involving federally created rights because the injured party could not appeal from the interlocutory order held to exceed the jurisdiction of the Superior Court, namely, an order requiring the United States Attorney for the Northern District of Illinois to withdraw his appearance for one of the defendants in an action to recover damages for alleged breach of contract. In that case the court said:

> "Neither the litigant, the attorney or the interest which the litigant or attorney represent, can appeal from such order. Nor is there any adequate remedy available to them other than the writ of mandamus from this Court.
>
> "The general power of this Court to issue a writ of mandamus to an inferior court to expunge from its records an order, judgment or decree which is void because entered without jurisdiction is settled by a long line of decisions."

In *People ex rel Prince* v. *Graber*, 397 Ill. 522, the Supreme Court of Illinois granted mandamus to expunge orders requiring a non-resident plaintiff to appear in the City of Chicago for pre-trial deposition and staying the prosecution of the action until he did appear and submit to examination in an action against the Railway Express Company to recover damages for negligence of the express company while transporting certain dairy cattle. See also *People ex rel Kerner* v. *Keeney*, 399 Ill. 611.

In the case at bar the questions presented are matters of national concern involving federally created rights which

have been indefensibly violated by the judgment of the Appellate Court of Illinois. If, as respondents contend, the judgment of the Appellate Court is not subject to review and correction by the Supreme Court of Illinois under the archaic appellate practice in that state in any other way than by the exercise by the Illinois Supreme Court of its mandamus jurisdiction, we submit that the denial of that remedy constitutes an illegal usurpation of substantive rights and an unwarranted refusal to abide by the rule of essential uniformity which this Court has said must be applied in all courts, state and federal, in these railroad cases.

This Court has had occasion, in connection with this same section of the Illinois Constitution, to deprecate the ineffectiveness of practice and procedure in Illinois in *Marino* v. *Ragen*, 332 U. S. 561, in which the concurring opinion states:

> "The Illinois scheme affords a theoretical system of remedies. In my judgment it is hardly more than theoretical. Experience has shown beyond all doubt that, in any practical sense, the remedies available there are inadequate. Whether this is true because in fact no remedy exists, or because every remedy is so limited as to be inadequate, or because the procedural problem of selecting the proper one is so difficult, is beside the point."

Because of the mongrel decisions and denial of appellate relief in Illinois, as is apparent to this Court in *Marino* v. *Ragen*, supra, and other decisions by the Illinois Supreme Court, the several different procedures of appeal were instituted by your petitioner. By profound study and legalistic analysis, the Supreme Court of Illinois has in a sense pronounced that if a litigant chose one method and not one of the other methods, the litigant erred in selecting the wrong appellate procedure.

This can be likened only unto Aesop's Fable of the fox and the lamb; irrespective of the method or the excuse, the lamb was devoured. And likewise, was the result to the litigant here, because of the theoretical system of remedies in Illinois.

What constitutes a void order or judgment as distinguished from a judgment or order which is merely erroneous and correctable only on appeal, or by writ of error, has been stated by the Supreme Court of Illinois in *Armstrong* v. *Obucino*, 300 Ill. 140, as follows:

> "The statement has very frequently been made that where a court has jurisdiction of the parties and subject matter, its decree, however erroneous, can only be attacked on appeal or error; but the rule is subject to an exception equally well settled,—that a decree may be void because the court has exceeded its jurisdiction. • • • Courts are limited in the extent and character of their judgments, and if they transcend their lawful powers their judgments and decrees are void and may be collaterally impeached wherever rights claimed under them are brought in question. The doctrine that where a court has once acquired jurisdiction it has a right to decide every question which arises in the cause, and its judgment or decree, however, erroneous, cannot be collaterally assailed, is only correct when the court proceeds according to the established modes governing the class to which the case belongs and does not transcend in the extent and character of its judgment or decree the law or statute which is applicable to it."

In *People ex rel Modern Woodmen of America* v. *The Circuit Court of Washington County*, 347 Ill. 34, it was held that jurisdiction of a court in a particular case includes not alone the power to hear the cause but likewise involves the power to render the particular judgment entered, and every act of the court beyond that power is void. See also *People ex rel Mike Maglori* v. *Joseph Siman*, 284 Ill. 28;